

**General Information Letter:** Response to questions re Subchapter S corporation filing of composite returns.

January 8, 1998

Dear:

This is in response to your fax dated December 29, 1997 in which you request a General Information Letter. Department of Revenue ("Department") regulations require that the Department issue only two types of letter rulings, Private Letter Rulings ("PLRs") and General Information Letters ("GILs"). PLRs are issued by the Department in response to specific taxpayer inquiries concerning the application of a tax statute or rule to a particular fact situation. A PLR is binding on the Department, but only as to the taxpayer who is the subject of the request for ruling and only to the extent the facts recited in the PLR are correct and complete. GILs do not constitute statements of agency policy that apply, interpret or prescribe the tax laws and are not binding on the Department. For your general information we have enclosed a copy of 2 Ill. Adm. Code Part 1200 regarding rulings and other information issued by the Department.

Although you have not specifically requested either type of ruling, the information you have provided requires that we respond with a general information letter.

In your request you stated:

We have an Illinois based client that is in the process of converting from a C corporation to an S corporation. The majority of the corporation's stock is held Illinois trusts. The trusts will be electing small business trusts ("ESBT") under IRC Section 1361(e). The Company does business in, and apports income to the State of Illinois.

We are seeking written permission for the ESBTs to file with the Company's composite return for nonresident shareholders. Allowing the ESBTs to file with the Company's composite return for nonresident shareholders. Allowing the ESBTs to participate in the composite return will significantly decrease administrative burden for both the taxpayer and the Illinois Department of Revenue. Rather than the filing of approximately 50 trust returns, along with the composite return for nonresident individual shareholders, the composite return will be completed for all nonresident shareholders. There is no detriment to Illinois if it allows the ESBTs to participate in the composite return. We respectfully request that the taxpayer be allowed to complete the composite return in this manner.

#### Department Analysis

Illinois Income Tax Act ("IITA") §502 States:

(a) In general. A return with respect to the taxes imposed by this Act shall be made by every person for any taxable Year:

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(3) Estates and Trusts. Returns or notices required of an estate or a trust shall be made by the fiduciary thereof.

Accordingly, each trust must file a separate Illinois income tax return. However, §502(f) allows composite reporting in certain situations. Section 502(f) states:

(f) The Department may promulgate regulations to permit nonresident individual Subchapter S corporation shareholders of the same Subchapter S corporation, and non-resident individuals transacting an insurance business in Illinois under a Lloyds plan of operation, and nonresident individual members of the same limited liability company that is treated as a partnership under Section 1501 (a)(16) of this Act, to file composite individual income tax returns reflecting the composite income of such individuals allocable to Illinois and to make composite individual income tax payments. The Department may by regulation also permit such composite returns to include the income tax owed by Illinois residents attributable to their income from partnerships, Subchapter S corporations, insurance businesses organized under a Lloyds plan of operation, or limited liability companies that are treated as partnership under Section 1501 (a)(16) of this Act, in which case such Illinois residents will be permitted to claim credits on their individual returns for their shares of the composite tax payments. This subsection (f) applies to taxable years ending on or after December 31, 1987.

Pursuant to §502(f), nonresident shareholders of an S corporation (including trusts) may file composite individual income tax returns for income allocable to Illinois. No written permission is needed to do this. In addition, such composite returns may include the tax owed by Illinois residents; however, to include resident trusts on the composite return, written permission will be required from the Document Perfection Section. I have enclosed a copy of 86 Illinois Administrative Code §100.5100 detailing what information the Document Perfection Section will require. I have also included several other regulations describing the workings of the composite return system. I hope that this information will be of help to you.

If you have additional questions please feel free to contact me at the above address.

Sincerely,

Charles E. Matoesian  
Staff Attorney  
Income Tax Division